

NATIONAL PARKS AND SOUTH FLORIDA
Testimony Before the Subcommittee on Criminal Justice,
Drug Policy and Human Resources

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My name is Dexter Lehtinen. I serve on the South Florida Ecosystem Restoration Task Force. I previously served as a Florida State Representative and State Senator. I also served as U.S. Attorney for the Southern District of Florida, where in 1988 I filed the AEverglades lawsuit@ against the State of Florida for violations of water quality in Everglades National Park and Loxahatchee National Wildlife Refuge. This lawsuit is widely perceived as the centerpiece of efforts to improve water quality essential for Everglades restoration, and is still active. I currently represent the Miccosukee Tribe of Indians of Florida in their quest for Everglades protection.

My remarks and observations will cover two general areas: (I) Problems in NPS management of our South Florida National Parks/Preserves (Everglades National Park, or AENP@; Biscayne National Park, or ABNP@; and Big Cypress National Preserve, or ABCNP@), which may have parallels nationwide; and (II) Problems in Everglades Restoration.

I. PROBLEMS IN LOCAL NPS MANAGEMENT:
NEED FOR PEOPLE ORIENTATION AND ECOSYSTEM-WIDE APPROACHES

The NPS track record in South Florida shows a need for greater people orientation and broader ecosystem-wide approaches in Park/Preserve management. While recently-appointed Everglades Superintendent Dan Kimball appears to be trying to move in this direction, the problems go deeper than personality, being rooted in bureaucratic biases and imperatives.

South Florida=s national parks and preserves are unparalleled treasures whose uniqueness and value will be understood ultimately only if they are open for public viewing and enjoyment, consistent with preservation. Public support is essential, and we are so close to a large urban area and international airport that failure to lure the public to view these treasures is shortsighted at best and self-defeating at worst. Therefore, we to reverse the anti-people attitude by:

(A) Re-build Flamingo Lodge in Everglades NPS, destroyed by recent hurricanes. A humble yet family-friendly Flamingo Lodge, with modest fees and providing protections from mosquitoes and the elements, will more than pay for itself in the long run in terms of public support. Congress should mandate re-opening the Lodge, as NPS attitudes are such that often natural disasters are used as an excuse to avoid continuing public access. The closing of the Chekika springs area in ENP in 1992, ostensibly due to hurricane damage, is an example.

(B) Re-open the Chekika spring area in ENP, which was closed to the public in 1992. My brother and I hunted near AMineral Springs@ in the 1950s, which was later established as Chekika State Park (named for an Indian leader killed in one of the last battles with US soldiers). The State Park was turned over to Everglades National Park in the early 1990s as part of the Park Expansion Act of 1989 and almost immediately thereafter closed to the public. ENP claimed hurricane damage

in 1992 caused a temporary closure. Chekika is closer and more accessible to the public than other parts of ENP (accessible on SW 168 St). What message does the NPS send to us as Floridians when we lost access to a historical site when we turned it over to the NPS, thinking we would be guaranteeing access?

You should also note that several homeowners were kicked out of their homes in the park expansion area around Chekika, only to have their homes then occupied by park employees and their families, who live there today. This favoritism of park employees over local residents should not be permitted. Likewise, the congressional resolution of ENP expansion, through the condemnation of more than 100,000 acres of private land in the park expansion area and the protection of a much smaller residential area (known as the 8.5 square mile area, as part of the modified water deliveries component of the act) was transgressed by the NPS, which quickly sought the benefits of the expansion but refused to cooperate with the modified water deliveries components. This attitude of "what's mine is mine, and what's yours is negotiable", by the NPS toward neighboring residents, has created overriding mistrust.

(C) Preserve Old Stiltsville in Biscayne Bay through a public-private partnership. The historic stilt houses in the Biscayne Flats south of Key Biscayne, erected in the rum-running days of Prohibition, represent a slice of old Miami, which Biscayne Park tried to remove when private leases expired in the late 1990s. Thinking better of this ill-advised course after public and congressional opposition, BNP is now oriented toward their preservation but must be encouraged in this regard as normal difficulties in such an endeavor must be surmounted.

(D) Preserve reasonable access to Big Cypress. The establishment of Big Cypress NP was a significant step, achieved through political compromise with condemnation of many landowners and protections for hunters and other Big Cypress outdoors enthusiasts. These compromises do not threaten BCNP's natural environment, but many local residents feel that BCNP constantly tightens their access just because of bureaucratic imperatives to exclude people's reasonable use.

(E) Realistically Protect the Public and Miccosukee Indians in all programs to protect the Florida Panther. In an effort at preservation, Florida Panthers have been cross-bred with the related Texas Cougar, which many believe has produced a more aggressive animal. Pure Florida Panthers, more nocturnal and shy around people, were less of a threat to humans. Residents of the Loop Road area in BCNP (both Indians and non-Indians alike) are expressing concern that the NPS and Fish and Wildlife Service (FWS) are not recognizing the threat to their children. Panthers have been seen and tracked electronically in residential backyards, along roads, in campgrounds with people camping. Residents have threatened to shoot Panthers if NPS and FWS do not implement reasonable protection plans. Both personal injury of a child from a Panther or sanction of a citizen under the ESA for proactive self-defense would be a bad development, bringing the ESA itself and administrative agencies into disrepute.

These examples are selected ways for NPS and the department of the Interior to move more toward a pro-people orientation in South Florida. Now I will turn to considerations of Everglades restoration.

II. PROBLEMS IN EVERGLADES RESTORATION: FIDDLING WHILE THE EVERGLADES DIES

While I worked to protect the National Parks while I was U.S. Attorney, the Park Service is currently supporting actions that are leading away from restoration. Single species management, bad science, misplaced priorities, and delay might appear to benefit Everglades National Park in the short term, but are devastating for Everglades restoration.

1. The Park Service=s Single Minded Approach Endangers Restoration and Disregards Science

Contrary to the belief of the National Park Service, the Everglades is comprised of more than just Everglades National Park. The health of Everglades National Park is directly tied to saving the rest of the Everglades. There is more freshwater Everglades to be saved outside of Everglades National Park and the Loxahatchee Wildlife Refuge than within the Park and the Refuge, but federal agencies discriminate against the state and Tribal Everglades, sacrificing the largest part of the remaining freshwater Everglades on account of the politics of the Parks. The Greater Everglades Ecosystem encompasses over two million acres of a precious resource with great international significance, yet the restoration of the Everglades, both inside and outside the Park is now being held hostage by selfish and shortsighted actions of the National Park Service.

The Miccosukee Tribe believes that AThe River of Grass is a world of beauty and life . . . and the world and life of the Miccosukee.@ Houston Cypress, Miccosukee Tribal member. Yet, the Tribal Everglades, and its endangered species, are given secondary status and the National Park Service is leading the charge. Mark Twain stated: AGet your facts first, then you can distort them as you please.@ The Park Service is a master at this, unfortunately, to the detriment of the only Everglades in the world. Congress is the latest recipient of such Park Service distortion. In 2002, the House Appropriations Committee directed the submission of a report on the current water management plan in the Everglades, the Interim Operational Plan (IOP), because it was concerned that IOP was not consistent with restoration goals. (H.R. 107-564). This report entitled AAn Assessment of the Interim Operational Plan,@ was not delivered until May of 2005 and is cause for concern (as discussed below).

2. The Cape Sable Seaside Sparrow is not the only endangered species that exists within the Everglades

Beginning in 1998, the Department of Interior agencies forced the Corps of Engineers to take Ashort term@ water management actions allegedly to protect the Cape Sable seaside sparrow. Tragically, these actions have not been Ashort term,@ nor have they helped the sparrow. More than seven years of Ashort term@ water management actions have caused severe man-made flooding of Tribal Everglades in WCA 3A, a part of the Everglades north of Everglades National Park. In addition to being part of the Miccosukee=s homeland, WCA 3A is the designated critical habitat for

the endangered snail kite. While Everglades National Park encourages keeping the water in the area of the sparrow at unnaturally low (well below CERP levels), water levels in the Everglades north of Everglades National Park are being kept unnaturally high (above CERP levels). These levels are even above the previous high water levels that we are supposed to be reducing through restoration. The result has been a decline of 50% in the population of the endangered snail kite during the years of IOP operation.

The sparrows, in the meantime, are NOT thriving as predicted by the Fish and Wildlife Service. These draconian water management actions have not helped sparrow subpopulation A, which is the subpopulation supposed to be helped by these actions. In fact, there were far more sparrows in subpopulation A eight years ago, before these new water management operations, than there are today. Yet in its Report to Congress, the Park Service has not been candid. The Report falsely states that the current water management operations resulted in lower average water levels and shorter hydroperiods in WCA 3A. The Report also fails to disclose that only one singing male was counted in subpopulation A in the 2004 sparrow breeding season. (The Park uses a formula of multiplying every singing male by 16 to estimate the number of birds). This is down from the 25 singing males counted when Fish and Wildlife Service became concerned in 1999 -- a 96% decline! There was also no evidence of a breeding population in the study area.

Yet, rather than give Congress the facts in the IOP Report that Congress demanded, the Everglades National Park Report claims that conditions were improved considerably for sparrows in Sup-population A from 2002 onwards. This in the face of an actual 96% decline in the sparrow population. It is apparent that the Park Service hopes that Congress never discovers that there was only one singing male left in these AImproved@ hydrological conditions in the 2004 survey.

Now, Everglades National Park has gone outside the study area in hunt of birds (re-defined the study area as larger). We urge you to not allow the Park to change its scientific methods, merely to bolster its single species management. Now that it is clear that the unnatural drying out of subpopulation A habitat (part of the Ashort term@ actions) has hurt, not helped, the once estuarine sparrow, the Park is scrambling to find support for its past actions. In any event, even if there was improvement to sparrows in the original study area (not what has happened in fact), this result would have to be balanced against the catastrophic flooding in the Tribe's homelands.

What about the snail kite, which the Everglades National Park Report says is a listed species most likely to be affected by IOP? The Report conveniently claims Ainformation was incomplete or time was insufficient to include information on it.@ Yet, at the time the Report was submitted to Congress, Everglades National Park was aware that studies done for Fish and Wildlife Service showed that the snail kite populations declined 50% under the years of ISOP and IOP flooding operations. A 2004 Snail Kite Demography Annual Report prepared for the U.S. Fish and Wildlife Service predicts very high extinction probabilities in the next 50 years if survival and reproduction maintain the same rates as per the last 10 years. The snail kite population declined drastically in 2003, due to a continuing decline in nesting success and juvenile and adult survivorship. Yet, the interim plan, that was predicted to adversely impact 88,300 acres of designated snail kite critical habitat continues, with no relief in sight. And nowhere in the Park=s report is there a description

that the Adverse impact is a drowning of one of the most treasured ecological resources of the Everglades, its tree islands. Nowhere is there a word that the Incidental take of snail kites amounts to the systematic killing of this magnificent bird B all in order to protect another species the Park Service deems more worthy and a portion of the Everglades only within the Park Boundaries.

Critical to restoration is the Modified Water Deliveries Project (passed in 1989), yet this is predicted to be completed in 2009, instead of the original completion date of 1997. Congress is rightfully concerned about whether IOP was consistent with the long delayed MWD and CSOP. The Everglades National Report attempts to show consistency. In reality, IOP is moving us further away from restoration goals. Finally, the Report incorrectly tells Congress MWD as part of CSOP will be implemented in 2006. MWD and CSOP are not scheduled to be implemented until at least 2009 or beyond.

In short, this single species management is bad for the Everglades ecosystem and demonstrates the hypocrisy of current management practices.

3. The Park Service Supports the Delay of Modified Water Deliveries, Which will Harm the Everglades and Everglades National Park

Perhaps the best example of an ongoing Everglades restoration problem is the failure to complete the Modified Water Deliveries Project (MWD), an essential project authorized by Congress in 1989 to restore more natural flows to the Everglades and Everglades National Park. WRDA 2000 directed the agencies to finally complete the long delayed Modified Water Deliveries Project, providing that there would be no more funds for congressionally authorized CERP projects designed to restore the natural flow of the water through the central Everglades until MWD is completed. Rather than expedite the Pre-CERP Modified Water Deliveries Project, other non-Everglades CERP projects are now being pushed forward and MWD is delayed. MWD will benefit more than 900,000 acres of Everglades wetlands (much north of ENP in historic tribal Everglades). Yet, during this delay, the interim water operation management program (IOP) in place is backing water up in the Everglades NORTH of Everglades National Park. These actions are causing excessive tree island loss and environmental damage to the largest expanse of sawgrass Everglades left in existence. The artificial damming of water north of Tamiami Trail has also contributed to high water in Lake Okeechobee and damaging releases to the St. Lucie and Caloosahatchee estuaries (the Atlantic and Gulf of Mexico sides of the Lake). Until the Modified Water Deliveries project is operational, the natural flow of water through the Everglades and Everglades National Park will not be restored, and the historic Everglades, no matter how progress is touted, will continue to be destroyed.

Replacing all the tree islands lost to flooding in WCA 3 would cost more than the entire \$8.4 billion Restoration project. Since the Central and Southern Florida Project went into operation in the 1940s through 1995, WCA 3A has lost 45% of its tree islands and 61% of the tree island acreage. The U.S. Army Corps of Engineers has estimated that each year of delay of the MWD Project would result in the loss of an additional 8.4 tree islands and 246 acres per year in WCA 3 alone at an estimated restoration cost of \$50,000 to \$500, 000 per acre. (Final GRR/SEIS on the 8.5 Square

Mile Area, Section 5.2.7, page 64 and Table 7.)

The loss to the Tribe=s culture and way of life, and to the Everglades ecosystem valued by all Americans, is incalculable. Yet the Park Service supports plans, such as revisions to the Tamiami Trail component of the Modified Water Deliveries Project and single species mis-management, that move away from restoration and keep the bulk of the harm on the Northern Everglades, outside of Everglades National Park. The people, birds and plants in the WCA=s are given secondary treatment despite the fact that P.L. 101-229 authorizing Modified Waters says that construction of the project modifications Aare justified by the environmental benefits to the Everglades ecosystem in general and the park in particularY@

4. Tamiami Trail and CSOP : Misplaced Priorities and Delay (A Tale of Two Bridges)

Under the Modified Water Deliveries mandate from Congress under PL 101-229, Tamiami Trail modifications were to be only a minor component. Yet, the Department of the Interior and National Park Service continue to delay the restoration of the dying Everglades by seeking to bridge Tamiami Trail under the Pre-CERP MWD.

The story of how a minor component became a major \$159 million dollar boondoggle Recommended Plan, costing two times the entire cost of the originally authorized MWD Project, smacks of politics and trickery. A modeling trick used in the Final RGR/SEIS was used to push for the bridge idea. Unhappy with MWD design volumes, the Park succeeded in getting the Corps to use a model for far more acre feet of water than Congress has authorized even for CERP (much less MWD). Not surprisingly, the Corps selected a Tamiami Trail two bridge alternative. The result is that the taxpayer will waste money on an unnecessary bridge for a Pre-CERP project, the cost of which has all ready escalated more than 300%.

The Federal objective for the MWD Project is to restore natural conditions to the extent practicable, which in the 2003 GRR/SEIS was a projected (maximum) MWD flow of 4,000 cfs. through Tamiami Trail. Despite the fact that PL 101-229 directed the Secretary of the Army only to restore flows Ato the extent practicable,@ and that WRDA 2000 prohibited the bridging of Tamiami Trail before MWD was implemented, DOI conspired to get a bridge based on greater volumes of water than even CERP allows. MWD was never intended to produce CERP volumes of water, let alone those that exceed CERP.

This inappropriate use of a model that allows for greater volumes of water than CERP to model water levels in parts of the Everglades outside of Everglades National Park (WCA 3B, L-29 canal) and to determine impacts to Tamiami Trail has resulted in the selection of an over-designed Recommended Plan that will cost at least 159 million dollars. This is almost twice the amount of the funds of 81 million dollars authorized for the entire MWD Project. The 4,000 cfs projected (maximum) MWD flow should be the federal objective. It is improper to over-design a project, and exceed project authorization, based on a future CERP that may never be authorized or built.

Instead, the Park pushed the use of the Awest bookend@ model as a boundary condition because it was the most environmentally aggressive plan that put the largest amount of water in

North East Shark River Slough. In fact, the west bookend has been soundly criticized and rejected in the CSOP Advisory Team Process as not being within MWD project authority. It is unclear why the Corps would allow this unrestrained DOI model, which would create vast flooding in urban and agricultural areas, to be used for a project that is only supposed to restore more natural hydrological conditions to the extent practicable. @

Indeed, by first pushing to buy the 8.5 square mile area that Congress directed to be protected (losing the push in the courts and in Congress) and now to bridge the Trail, DOI has delayed a pre-CERP project that was to be completed by 1997. MWD would benefit 900,000 acres of Everglades wetlands in the park WCA 3A and WCA 3B. Yet, the Park Service, apparently not satisfied with such benefits, continues to change the game (and the model) while the Everglades dies.

It is time that Congress hold the Park Service accountable by 1) making them prove the statements they provide in reports; and 2) making them follow their directives in PL 101-229 and WRDA 2000. CERP, and thus the Everglades as a whole, is a victim of this fiddling while the Everglades dies. The Miccosukee Tribe, whose members have called the Everglades home for centuries ask Congress to hold these agencies accountable for the damage they are causing and the projects they are delaying. Thank you.